

The Gazette of India



EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 290] NEW DELHI, SATURDAY, DECEMBER 11, 1954

ELECTION COMMISSION, INDIA
NOTIFICATION

New Delhi the 10th December, 1954

S.R.O. 3557.—In continuation of the Election Commission's notification No. 19/257/52-Elec.III/17983, dated the 5th November 1954, published in the *Gazette of India Extraordinary*, Part II, Section 3, dated the 2nd December 1954, under section 106 of the Representation of the People Act, 1951 (XLIII of 1951), the Election Commission hereby publishes the judgment of the Supreme Court of India delivered by it on the 18th October 1954, on the appeal filed before that Court by Shri Mahendra Kumar, s/o Shri Brijlal, r/o Gandhi Bhawan, Chhatarpur, against the judgment and order of the Election Tribunal, Nowgong, dated the 10th November 1953, in election petition No. 257 of 1952.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 53 OF 1954

Mahendra Kumar—Appellant.

Versus

Smt. Vidya Vati & Others—Respondents.

Appeal by Special Leave granted by this Court by its Order, dated the 15th March 1954 from the Judgment and Order, dated 10th November 1953 of the Election Tribunal, Nowgong, (Vindhya Pradesh) in Election Petition No. 257 of 1952.

The 18th day of October, 1954

PRESENT:

The Hon'ble Mr. Justice Bijan Kumar Mukherjee,

The Hon'ble Mr. Justice Vivian Bose,

The Hon'ble Mr. Justice T. L. Venkatarama Ayyar.

For the Appellant—Mr. Veda Vyas, Senior Advocate with Messrs. S. K. Kapoor and C. P. Lal, Advocates.

For the Respondents—Mr. N. C. Chatterjee, Senior Advocate with Mr. G. C. Mathur, Advocate.

JUDGMENT

The Judgment of the Court was delivered by—

Venkatarama Ayyar, J.—This is an appeal by special leave against the decision of the Election Tribunal, Nowgong, setting aside the election of the appellant to the Legislative Assembly, Vindhya Pradesh, from Laundi Constituency, on the

ground firstly that he had employed Government servants as polling agents, and thereby committed a major corrupt practice under section 123(8) of Act No. 43 of 1951, and secondly, that there were at the material period, contracts subsisting between the appellant and the Vindhya Pradesh Government for printing electoral rolls, and that he was therefore, disqualified under section 17 of Act No. 49 of 1951.

As regards the first point, we have held in Civil Appeal No. 52 of 1954 and in C.M.P. No. 641 of 1954 that the appointment of a Government servant as polling agent does not *per se* fall within the mischief of section 123(8). Mr. Chatterjee for the respondent referred us to the evidence of P.W. 5 which, if accepted, would show that the polling agent did also canvassing work for the appellant. If this evidence is to be accepted, then there was undoubtedly corrupt practice falling within section 123(8). But there is no finding of the Tribunal on this aspect of the matter, and its decision rests merely on the appointment by the appellant of Government servants as polling agents. Following the decisions already mentioned, we hold that there has been no contravention of section 123(8) by the appellant.

With reference to the second question, we have held in the decisions already referred to, that contracts with the Chief Commissioner in Part C States would operate as a disqualification for election to the State Legislatures under section 17 of Act No. 49 of 1951 read along with section 7(d) of Act No. 43 of 1951. Mr. Veda Vyas for the appellant argues that the contract for the printing of electoral rolls must be held to have been entered into with the Election Commission and not with the State Government or the Union Government, and in support of this contention, relies on Article 324 of the Constitution, which provides that the superintendence, direction and control of the preparation of the electoral rolls shall be vested in the Election Commission, and that the President or the Governor or the Rajpramukh of a State shall, when so requested by the Election Commission, make available to the Election Commission such staff as may be necessary for the discharge of the functions conferred on the Election Commission. Apart from the fact that preparation of electoral rolls is not the same thing as printing thereof, it does not follow from these provisions that the Election Commission has itself to enter into contracts for the printing of electoral rolls. The finding of the Tribunal is that it was the Vindhya Pradesh Government that got the electoral rolls printed. Exhibit A-4 is a copy of a letter sent by the appellant to the Secretary to the Chief Commissioner, Vindhya Pradesh, and that clearly shows that it was the Vindhya Pradesh Government that settled the terms of the contract and made payments thereunder. We accept the finding of the Tribunal that the appellant held contracts with the Vindhya Pradesh Government at the material dates. He was therefore disqualified under section 17 from being chosen to the Legislative Assembly.

The decision of the Election Tribunal setting aside the election must be affirmed on this ground, and the appeal dismissed. There will be no order as to costs.

(Sd.) B. K. MUKHERJEA J.

The 18th October 1954.

(Sd.) VIVIAN BOSE J.

(Sd.) T. L. VENKATARAMA AYYAR J.

[No. 19/257/52-Elec.III/19390.]

By Order,

K. S. RAJAGOPALAN, Asstt. Secy.